

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 41-030-15-1-5-00699-16
Petitioner: Lakeland Enterprises, LLC, c/o David Schaefer
Respondent: Johnson County Assessor
Parcel: 41- 05-08-044-060.000-030
Assessment Year: 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its 2015 assessment appeal with the Johnson County Assessor on September 10, 2015.
2. On February 26, 2016, the Johnson County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on August 3, 2016.
5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on September 26, 2016. She did not inspect the property.
6. Kathryn Poulimas appeared for the Petitioner.¹ Michael Watkins appeared for the Respondent. Dianne Huntzinger and Ashley Wright were witnesses for the Petitioner. All of them were sworn.

Facts

7. The property under appeal is single-family residence located at 2458 Providence Court in Greenwood.
8. The PTABOA determined the total assessment is \$123,000 (land \$15,300 and improvements \$107,700).

¹ Mrs. Poulimas is a designated member of Lakeland Enterprises, LLC. Additionally she is the designated claimant on the Claim for Homestead Property Tax Standard/Supplemental Deduction (Form HC10).

9. On the Form 131, the Petitioner requested a total assessment of \$85,000 (land \$15,000 and improvements \$70,000).

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: 2012 Notification of Final Assessment Determination (Form 115),
- Petitioners Exhibit 2: 2015 Notice of Assessment (Form 11),
- Petitioners Exhibit 3: 2015 original assessment appeal dated September 10, 2015,
- Petitioners Exhibit 4: 2015 Form 115,
- Petitioners Exhibit 5: Indiana Association of Realtors press release, dated February 24, 2015,
- Petitioners Exhibit 6: Federal Housing Finance Agency news release, dated May 26, 2015,
- Petitioners Exhibit 7: Zillow Home Value Index for Greenwood,
- Petitioners Exhibit 8: F.C. Tucker blog post by Daniel Williams, dated February 2015,
- Petitioners Exhibit 9: Realtor Property Resources survey regarding median estimated home value in the 46143 zip code, dated August 15, 2016,
- Petitioners Exhibit 10: Realtor Property Resources survey regarding median estimated home value in Greenwood, dated August 15, 2016,
- Petitioners Exhibit 11: Realtor Property Resources survey regarding median estimated home value in Johnson County, dated August 15, 2016,
- Petitioners Exhibit 12: Form HC10 filed December 2, 2014.

- Respondent Exhibit 1: 2015 subject property record card,
- Respondent Exhibit 2: Form HC10 filed December 2, 2014,
- Respondent Exhibit 3: 2015 original assessment appeal dated September 10, 2015,
- Respondent Exhibit 4: Letter from Michael Watkins to the Petitioner requesting evidence prior to the Board's hearing, dated September 6, 2016.

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Notice of hearing dated August 3, 2016,
- Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Unanimous Consent of the Members of Lakeland Enterprises, LLC.

d) These Findings and Conclusions.

Objections

11. The Respondent objected to Petitioner's Exhibit 3 and 8 as hearsay because the authors of the exhibits were unavailable to be cross-examined. In response, the Petitioner stated "the owner is here." The ALJ took the objections under advisement.
12. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

13. While Petitioner's Exhibit 3 includes some hearsay evidence, the exhibit merely serves as the Petitioner's intent to initiate the appeal at the local level. Additionally, the Respondent offered this same exhibit as Respondent's Exhibit 3. Accordingly, the objection to Petitioner's Exhibit 3 is overruled
14. Petitioner's Exhibit 8 is hearsay. The Petitioner failed to argue the exhibit falls within any recognized exception to the hearsay rule. As such, Petitioner's Exhibit 8 is admitted to the record, but in accordance with the Board's procedural rules. The Board notes, however, this ruling has no effect on the final determination.

Contentions

15. Summary of the Petitioner's case:
 - a) The property's assessment is too high. At the local level, the PTABOA erred in denying any relief because the Petitioner's evidence was not considered. The PTABOA inadvertently failed to send Mr. Schaefer a notice of hearing and as a result he could not properly present evidence regarding the inaccurate assessment. *Wright argument; Pet'r Ex. 1, 4.*

- b) The property was purchased in 2005 by Mr. Schaefer for his parents to live in. The Property was rented to his parents until 2014, when his mother took over ownership. Because the home is now owner occupied, the assessment increase is “retribution” for the tax revenue lost when the homestead deduction application was approved. *Wright argument; Pet’r Ex. 3, 12.*
- c) In support of its position, the Petitioner presented sales of several homes located within 0.7 miles of the subject property. The average sale price of these homes equates to \$42 per square-foot. The following are comparable sales:
- 2308 Harvest Mood Drive Greenwood \$89,881 sale price
 - 48 Winterwood Drive Greenwood \$84,001 sale price
 - 120 Winterwood Drive Greenwood \$79,512 sale price
 - 627 Pine Lake Drive Greenwood \$60,000 sale price
 - 675 Pine Lake Drive Greenwood \$65,940 sale price

Wright testimony; Pet’r Ex. 3.

- d) The subject property’s 2015 assessment increased 26.5% from the previous year. Typically Johnson County properties increase at a 3% rate. Various articles indicate home prices in the Greenwood and Johnson County area have only gone up 1.3% to 7.6% between 2014 and 2015. Local real estate agents “would list the property for \$93,000, hoping to get \$85,000 to \$92,000.” The property should be assessed at \$85,812 in accordance with the Realtor Property Resource. *Wright argument; Pet’r Ex. 3, 5, 6, 7, 8, 9, 10, 11, 12.*

16. Summary of the Respondent’s case:

- a) The subject property is correctly assessed. In 2014, the subject property was assessed as a “rental property.” Accordingly, the Gross Rent Multiplier (GRM) was utilized to make the 2014 assessment. However, in December 2014, a Homestead Deduction was filed by Ms. Poulimas as an “owner occupied property.” Thus, for the 2015 assessment, the home was assessed utilizing the Indiana Guidelines cost approach, resulting in an increase to the assessment. *Watkins testimony; Resp’t Ex. 1, 2.*
- b) The evidence presented by the Petitioner fails to prove the property is incorrectly assessed. The Petitioner failed to provide any details regarding the purportedly comparable properties. Additionally, the articles presented utilize sales from “all over Johnson County, Greenwood, and even the entire United States.” *Watkins argument (referencing Pet’r Ex. 5, 6, 7, 8, 9, 10, 11).*

Burden of Proof

17. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.

18. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
19. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
20. Here, the parties agree the assessed value of the property increased by more than 5% from 2014 to 2015. However, there is no dispute the property changed from a rental property in 2014 to an owner occupied property in 2015.² The Respondent argued this constitutes a “change in use” as the property was assessed using the GRM in 2014 and according to the Guidelines in 2015. Accordingly, the Respondent argued the burden shifting provisions do not apply and the burden remains with the Petitioner. The Petitioner did not offer any response to this argument. The ALJ made the preliminary determination that the burden remains with the Petitioner.
21. Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the same property increases by more than 5%. In this case, however, the Board agrees with the Respondent that the 2015 assessment is based on a use not considered for the prior tax year and that change in use resulted in a different method of assessment. Indiana Code § 6-1.1-15-17.2(c)(3) “does not apply to an assessment if the assessment that is the subject of the review or appeal is based on: (1) structural improvements; (2) zoning; or (3) *uses*; that were not considered in the assessment for the prior tax year. Ind. Code § 6-1.1-15-17.2(c)(3) (emphasis added).

² This fact raises the question of whether Lakeland Enterprises, LLC, has standing to bring the 2015 appeal. The claimant listed on the homestead deduction application is Kathryn J. Poulimas, not Lakeland Enterprises, LLC. However, the 2015 assessment was made against Lakeland Enterprises, LLC. As noted above, Mrs. Poulimas is a designated member of the LLC. Thus, while Mrs. Poulimas is no longer paying rent and testified she has assumed ownership of the property, the record is unclear regarding a sale or title change. Most importantly, the Respondent did not argue that Lakeland Enterprises, LLC, lacked standing to appeal the 2015 assessment. Therefore, lacking anything in the record to conclusively prove otherwise, the Board will assume Lakeland Enterprises, LLC, has proper standing.

Here, the Board agrees with the Respondent that the *use* of the property changed and ultimately the method for valuing the property changed because the property changed from “rental” to “owner occupied.” The Board notes, however, this decision was based upon the unique facts of this case. The Board will continue the long standing principle of examining each case on its own facts. The Board adopts the ALJ’s preliminary decision and finds the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply. The burden remains with the Petitioner.

Analysis

22. The Petitioner failed to make a case for reducing the 2015 assessment.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2015 assessment, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) In an attempt to prove the property is incorrectly assessed, the Petitioner offered sale prices of five purportedly comparable properties located within 0.7 miles of the property. According to these sales, the Petitioner calculated an average sale price of \$42 per square foot for the properties. Using this square-foot average, the Petitioner argued the subject property should be valued at \$85,470.
 - d) It appears the Petitioner is attempting to use the sales-comparison approach to prove the property’s value. But to effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner failed to provide the analysis as required by *Long*. The only evidence presented regarding the purportedly comparable properties was a sales price, but it is not clear from the record when the properties sold. In fact, Ms. Wright

incorrectly argued that it was the Respondent's duty to provide evidence regarding the purportedly comparable properties.

- e) Additionally, the Petitioner failed to offer any evidence that simply applying an average square-foot value to determine a value for the subject property comports with generally accepted appraisal principles. For these reasons, the Petitioner's sales-comparison analysis lacks probative value.
- f) The Petitioner also offered data about property values in Greenwood and Johnson County, arguing this assessment increased too much in comparison. The Petitioner argued that by utilizing Realtor Property Resources, the assessment should be \$85,812. The relevant question, however, is not how much the assessment increased, but whether the assessment is an accurate measure of the property's market value-in-use as of March 1, 2015. Offering the average percentage increase of all other properties in Johnson County does not answer that question. Additionally, the Petitioner failed to indicate how utilizing Realtor Property Resources is a recognized method to measure market value-in-use. This kind of evidence lacks probative value.
- g) Finally, the Petitioner argued that the PTABOA hearing was flawed because Mr. Schaefer did not receive a notice of hearing and his evidence was not considered by the PTABOA. This point is irrelevant because the Board's proceedings are *de novo*. The Board owes no deference to the PTABOA determination. The purportedly insufficient notice and review did not hinder the opportunity to present relevant evidence and argument during the Board's hearing. *See* Ind. Code § 6-1.1-15-4.
- h) Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d at 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

23. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2015 assessment will not be changed.

ISSUED: February 9, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.